

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF PUERTO RICO

FEDERAL DEPOSIT INSURANCE, CORP.,

Plaintiff,

v.

EMPRESAS CERROMONTE CORP. et. al.,

Defendant.

CIVIL NO. 10-1623 (PG)

**O R D E R**

Before the Court is the Magistrate Judge's Report and Recommendation regarding the Federal Deposit Insurance Corporation's ("FDIC")<sup>1</sup> motion to voluntarily dismiss its claims against defendants Emerito Estrada Rivera-ISuzu de Puerto Rico and its principal Digno Emerito Estrada Rivera, his spouse Edith Delia Colón Feliciano and their conjugal partnership (collectively, "the Estrada defendants") (Docket No. 84). Having reviewed the same, *id.*, as well as the limited objection filed by the FDIC (Docket No. 92), the applicable law, and the record of the case, for the reasons set forth below, the Report and Recommendation is **APPROVED AND ADOPTED** in all its parts, except as to the dismissal with prejudice of the claims against the Estrada defendants.

Following the issuance of a Report and Recommendation, the Court reviews *de novo* the matters delimited by timely and appropriately specific objections. See 28 U.S.C. § 636(b) (2004), Fed. R. Civ. P. 72(b) (2004), and Local Rule 72(d) (2004); see also Borden v. Secretary of Health & Human

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<sup>1</sup> The FDIC was appointed receiver of original plaintiff R-G Premier Bank.

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Servs., 836 F.2d 4, 6 (1st Cir. 1987) ("Appellant was entitled to a de novo review by the district court of the [Magistrate's] recommendations to which he objected, however he was not entitled to a de novo review of an argument never raised.") (citation omitted); Phinney v. Wentworth Douglas Hosp., 199 F.3d 1, 3-4 (1st Cir. 1999). An objection is timely if filed within ten days of receipt of the Magistrate Judge's Report and Recommendation. See 28 U.S.C. § 636(b), Fed. R. Civ. P. 72(b), and Local Rule 72(d). The Court thereafter "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." Id. The Court accordingly reviews defendants objections *de novo*.

The FDIC timely submitted a limited objection; to wit, that the dismissal issued by the Court be without prejudice. (Docket No. 92 at 1). In their motion requesting withdrawal of the claims against the Estrada Defendants (Docket No. 26), the FDIC did not specify whether the dismissal requested was with or without prejudice. On the Report and Recommendation (Docket No. 84), the Magistrate recommended that all claims be dismissed with prejudice. Docket No. 84 at pg. 7.

The FDIC asserts that it has "obtained information regarding the Estradas' involvement with Cerromonte, which might demand filing a claim against them in the future." Docket No. 92 at pg. 3. Alternatively, it goes on to explain, if the Court intends to dismiss with prejudice, the FDIC would withdraw its request for voluntary dismissal. Id. After evaluating the FDIC's request, the Court accepts it.

Hence, having carefully reviewed the Magistrate Judge's Report and Recommendation, the Court finds the same to be reasonable and absent of clear error.

**WHEREFORE**, in light of the foregoing, the Magistrate Judge's Report and Recommendation is **APPROVED AND ADOPTED**, except as to the **Dismissal with**

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**Prejudice of the claims.** Judgment shall be entered dismissing without prejudice the FDIC's claims against defendants Emerito Estrada Rivera-ISuzu de Puerto Rico and its principal Digno Emerito Estrada Rivera, his spouse Edith Delia Colón Feliciano and their conjugal partnership.

**IT IS SO ORDERED.**

In San Juan, Puerto Rico, May 2, 2013.

S/ JUAN M. PÉREZ-GIMÉNEZ  
JUAN M. PÉREZ-GIMÉNEZ  
UNITED STATES DISTRICT JUDGE